

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

DANNY MCDONALD,

Plaintiff,

vs.

**CAROLYN W. COLVIN¹,
Acting Commissioner of Social Security,**

Defendant.

Case No. 4:12CV1313SNLJ

ORDER AND JUDGMENT

On June 5, 2013 this cause of action was referred to the United States Magistrate Judge for a supplemental report and recommendation in light of the Government's objections to the original report and recommendation [28]. *See*, Court Order [30]. Upon the subsequent referral, the Magistrate Judge allowed the interested parties to submit further briefings on the Government's objections. *See*, Court Order [31], filed June 5, 2013. The parties filed additional briefs and the Magistrate Judge has now vacated the original report and recommendation [28] and filed a subsequent order, report and recommendation [35], filed August 29, 2013. The plaintiff has filed an objection to the subsequent order, report and recommendation [38], filed September 17, 2013.

In its objections to the original report and recommendation, the Commissioner made two (2) primary arguments against remand. The Commissioner first pointed out that under current

¹As of February 14, 2013 Carolyn W. Colvin was appointed the Acting Commissioner of Social Security; thereby, replacing Michael J. Astrue as the Commissioner of Social Security.

regulations IQ test scores obtained between the ages of 7 and 16 are only good for a period of 2 yrs when the score is 40 or above **[plaintiff's scores were 72 and 73]**. Thus, the Commissioner argued that remand was unnecessary to see whether the plaintiff's impairments medically equal Listing 12.05C for mental retardation because there is no valid IQ score during the relevant disability time-period.

The Commissioner further argued that given the plaintiff's work history and daily life skills/activities, the evidence already on the record demonstrated that plaintiff does not have sufficient deficits in adaptive functioning as required by Listing 12.05C and under the POMS guidelines; thus, the ALJ's findings are valid even if the deficits are not expressly noted.

The Magistrate Judge thoroughly reviewed the parties' position regarding the plaintiff's IQ scores and the POS guidelines/Listing 12.05C and determined that plaintiff's IQ scores should be discounted as being no longer valid pursuant to 20 C.F.R. §404 app.1. Furthermore, the Magistrate Judge found that although the ALJ found that plaintiff did not meet any Listing, the ALJ's failure to discuss Listing 12.05C was not error requiring remand because there was substantial evidence on the record to support finding the ALJ's finding that plaintiff did satisfy the requirements of Listing 12.05C. The Magistrate Judge recommends that the final decision of the Commissioner be affirmed.

After careful consideration of the matter, the Court concurs with the well-reasoned recommendation of the Magistrate Judge. The plaintiff's submitted IQ scores are untimely pursuant to current regulations. Furthermore, substantial evidence on the record supports the ALJ's finding that plaintiff failed to satisfy the requirements of any Listing, including Listing 12.05C. The ALJ did not err by failing to discuss specifically whether plaintiff's impairments or combination of impairments does not meet the medical equivalency of Listing

12.05C as long as the record substantially supports such a finding. *See, Boettcher v. Astrue*, 652 F.3d. 860, 863.

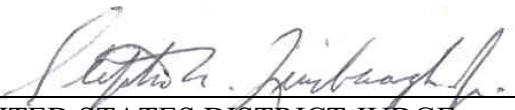
Accordingly,

IT IS HEREBY ORDERED that the Supplemental Order, Report and Recommendation of United States Magistrate Judge David D. Noce [35], filed August 29, 2013 be and is **SUSTAINED, ADOPTED** and **INCORPORATED** herein.

IT IS FURTHER ORDERED that the relief sought by the plaintiff in his Complaint and Brief in Support of Complaint be and is **DENIED**.

IT IS FINALLY ORDERED that judgment be entered in favor of the defendant Commissioner. The final decision of the Commissioner of Social Security is hereby **AFFIRMED**. This Court does not retain jurisdiction of this matter.

Dated this 25th day of September, 2013.


UNITED STATES DISTRICT JUDGE